

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.14308 OF 2024

Mukim Ibrahim Rais

.. Petitioner

Versus

Abdul Bari Imamuddin Kharbe and Ors.

.. Respondents

-
- Mr. Kishor Patil a/w. Mr. Sammer Mhatre i./by Mr. Amol P. Mhatre, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : MAY 09, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Patil, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 09.05.2024 and the Writ Petition.
- 4.** The present Writ Petition points out my earlier order dated 26.02.2024 passed in Writ Petition No.15541 of 2022 whereby certain directions were given to the learned Trial Court. The directions are given in paragraph No.8 of the order dated 26.02.2024.
- 5.** One Miscellaneous Application No.76 of 2020 is subject matter before the learned Trial Court and direction was passed to decide the said issue in accordance with law. This direction was given as far back as on 26.02.2024.

6. Writ Petitioner would today complain that till date, the said Application / issue has not been decided but in the interregnum an interlocutory Application of the Respondent has been considered and decided and issue pertaining to Miscellaneous Application No.76 of 2020 has remained pending.

7. He would submit that considering the fresh Application of Respondent having been decided, the order dated 26.02.2024 is not complied with. He would submit that learned Trial Court has passed order on 18.04.2024 allowing the Application of the Respondent, which is under challenge in the present Writ Petition.

8. In view of the fact that the learned Trial Court has allowed the Application filed below Exhibit-90 of the Respondent and considering the substantive challenge maintained thereto, the Writ Petitioner would submit that this Court will have to be hear the parties with respect to that challenge and only thereafter the fate of withdrawal of Miscellaneous Application No.76 of 2020 can be decided.

9. I have perused order dated 18.04.2024 passed below Exhibit-90 in Civil Miscellaneous Application No.76 of 2020 which is at page No.100 of the Writ Petition.

10. In view of the above, an arguable case has been made out by Mr. Patil for issuance of notice to Respondents.

11. Hence, issue notice to the Respondent Nos.1, 2, 4/1, 4/2 and 5. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondent Nos.1, 2, 4/1, 4/2 and 5 a copy of this order and copy of the Writ Petition and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Writ Petition on or before the next date.

12. In the meanwhile, there shall be an ad-interim relief in terms of prayer clause (b) of the Writ Petition.

13. Stand over to **12th June, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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